COURT NO.2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Income Tax Appeal No. 18 of 2001

1. Commissioner of Income Tax, Meerut
2. Assistant Commissioner of Income Tax, Special Circle, Dehradun

... Appellants

Versus

M/s Hughes Services (FE) Pvt. Ltd.
as agent of Mr. O.Connor Anthony, Dehradun

... Respondent

Dated: March 7, 2006

Mr. Pitamber Maulekhi, Advocate for the appellants.
Mr. Ambrish Chaterji, Advocate for the respondent

Coram: Hon. P.C. Verma, J.
Hon. B.C. Kandpal, J.

This appeal is against the order dated 06.04.2000, passed by the Income Tax Appellate Tribunal, (Delhi Bench 'B' New Delhi) in ITA No.1735/(Del) of 1994. The dispute relates to the Assessment Year 1990-91.

2. The substantial questions of law raised in the appeal are as follows:

> (i) Whether the Tribunal committed an error or law in holding that the salary paid to the assessee, for the off period, outside India was not chargeable to tax in terms of Section 9(1) (ii) of the Income Tax Act, 1961?"
>
> (ii) Whether on the facts and in the circumstances of the case, the learned Income Tax Appellate Tribunal was legally correct in holding that any benefit or perquisite or their value on account of free lodging and free boarding provided by the employer to its employee within the meaning

of Section 17(2) of I.T. Act cannot be taxed under Section (2)(24)(iva) of the Income Tax Act?"

(iii) Whether on the facts and circumstances of the case, the learned Income Tax Appellate Tribunal was legally justified in allowing the appeal in favour of the assessee against chargeability of interest under Section 234-B of the I.T. Act whereas this interest is chargeable on assessed tax as defined by Explanation 1 below Section 234-B?"

3. The first question has been decided by the Hon'ble Apex Court in Civil Appeal Nos.351-355 of 2005 ***"Sedco Forex International Drill Inc. and Others Vs. Commissioner of Income Tax, Dehradun and Another, JT 2005(9) SC 639"***. In view of the aforesaid decision of the Hon'ble Apex Court, this question is answered in favour of the assessee.

4. So far as the question Nos.2 and 3 are concerned, a Division Bench of this Court in the case of *Commissioner of Income Tax and another Vs. Sedco Forex International Drilling Co. Ltd. and connected cases reported in (2003) 264 ITR 320,* has held that the free boarding facility provided by the employer on the rig was not a perquisite under Section 17(2)(iii) and that its value cannot be added to the income of the assessee. It has also been held that the imposition of interest under Section 234-B was not justified without hearing and without reasons.

5. In view of the above, we dismiss the appeal. All the questions in this appeal are answered against the appellants and in favour of the assessee.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

Rajeev Dang